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AFFINITY ENGINES, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

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| GOOGLE INC., a Delaware corporation,<br><br>Plaintiff,<br><br>v.<br><br>AFFINITY ENGINES, INC., a Delaware corporation,<br><br>Defendant. | Case No. C 05-0598 JW (HRL)<br><br>**NOTICE OF PENDENCY OF OTHER ACTION**<br><br>**(CIVIL L.R. 3-13)**<br><br>The Honorable James Ware |

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Pursuant to Civil Local Rule 3-13, defendant Affinity Engines, Inc. ("AEI") respectfully submits this Notice of Pendency of Other Action. This action involves a material part of the same subject matter and substantially all of the same parties as a pending state court action that has been pending for more than nine months.

The named parties in the present action are currently litigating a dispute in state court in which AEI is the plaintiff. The state court lawsuit, entitled *Affinity Engines, Inc. v. Google, Inc. et al.*, Case No. 104 CV 020368, is currently pending before Judge William J. Elfving in Santa Clara Superior Court. A copy of the Complaint in the state court action is attached as Exhibit A to the Declaration of Rory G. Bens in Support of AEI's Motion to Dismiss and/or Stay Proceedings ("Bens Decl."). A Trial Setting Conference has been set for April 26, 2005, and AEI expects trial in the state court action to occur by August 2005. *See* Bens Decl. ¶ 3.

As explained in more detail in AEI's Motion to Dismiss and/or Stay Proceedings ("AEI's Motion"), filed concurrently herewith, the state court action and this action are closely related. In the state court action, AEI is pursuing several causes of action against Google, Inc. ("Google"), including misappropriation of AEI's trade secret and confidential information. These claims generally relate to Google's misappropriation of the software and source code for "inCircle," AEI's flagship product. In the present action, Google contends that it owns the "inCircle" software that is the basis of AEI's state court claims. Google alleges that AEI is infringing Google's purported copyright in the inCircle product and source code. Both the state action and the present action involve overlapping factual and legal issues including, among other things, ownership of the inCircle software and source code and the interpretation of several written agreements entered into between the parties.

As explained in AEI's Motion, the proceedings in the present action should be stayed pending final judgment in the state court action. A stay of the present action will avoid conflicts, conserve resources and promote an efficient determination of the action.

Dated: March 1, 2005

Respectfully submitted,

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/

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